

1 A Yes.

2 Q And for clarification, are you referring to
3 BellSouth's initial filing in the first phase of the docket
4 as supplemented with its testimony on cost of capital and in
5 the second phase of the proceeding?

6 A Yes, it was the latter of those. And I note these
7 are -- that very step of using their filed TELRIC not only
8 gives them more money, higher prices than the Commission
9 later found was appropriate for TELRIC, but if you look at
10 some of the trade secret documents that were distributed,
11 you'll see that these filed TELRIC rates are themselves
12 substantially above BellSouth's incremental cost, at least
13 for switching, which is -- which they provide the cost
14 information for in the exhibits Mr. Magness introduced.

15 Q Okay, and you got ahead of me a little bit on the
16 questions because I think you were --

17 A I'm sorry.

18 Q No, that's fine, I just wanted to point out that
19 there were -- as I understand your explanation of this first
20 step, you refer to two benefits that can be derived from
21 this first step. One being that the Commission will be
22 granting BellSouth -- maybe not a benefit, but support for
23 your proposal -- the Commission will be granting BellSouth a
24 higher rate of return on Section 271 elements than elements
25 offered pursuant to Section 251, and will also eliminate any

1 dispute as to whether the appropriate input assumptions have
2 been used. Is that a fair characterization of your
3 testimony?

4 A Yes.

5 Q Okay. Now other than it being higher than the
6 return on elements subject to Section 251, is there anything
7 else that makes these rates appropriate for Section 271
8 elements?

9 A Well, I think at the end of the day, on the one
10 hand, BellSouth gets more money; on the other hand, CLECs
11 still have, I believe, a meaningful opportunity to compete.
12 They won't have the same opportunity to compete as they've
13 had in the past, but I think you'll still be granting them
14 an opportunity to provide some retail services in
15 competition with BellSouth. So that would be a benefit of
16 it.

17 If there's more, it's not coming to my mind right
18 now.

19 Q I didn't want to interrupt, but I wasn't sure --
20 you looked like you were still thinking.

21 A Well, I was, but that didn't mean anything came
22 out.

23 COMMISSIONER EVERETT: Getting old.

24 THE WITNESS: Not the age, it's the miles.

25 (Laughter.)

1 BY MR. WALSH:

2 Q Your second step is to increase the overhead
3 loading applied to the direct cost measure described in the
4 first step of your proposal, correct?

5 A Yes.

6 Q And in this discussion, you mention shared and
7 common costs, correct?

8 A Yes.

9 Q Now is that the only input that would have to be
10 adjusted in this part of the process, or are there others?

11 A No, that would be the only one.

12 Q Okay.

13 A The first part of the process gives you a generous
14 estimate of direct cost and the second part of the process
15 is then giving a recovery to joint and common, which is
16 basically the form of the new services test that the FCC
17 uses.

18 Q And are you recommending a specific increase?

19 A I increased all the allocations to 20 percent.
20 They varied inside the BellSouth cost models, but they
21 averaged around 15 percent and we increased them by about a
22 third, to 20 percent.

23 Q Okay. And on that, let me get you to refer to
24 page 31 of your testimony where you're talking about your
25 recommended flat rate.

1 A Yes.

2 Q This is for switching.

3 A Yes.

4 Q Okay. And if I could just get you to clarify
5 again, what was the particular number that you were making
6 the 20 percent adjustment on here, that you were talking
7 about in the testimony?

8 A I adjusted each of the rate elements that the
9 Commission uses for 251 switching, the port, the features
10 and the usage, and then rolled it all up into a single
11 composite flat rate per month.

12 Q Okay, and were there any other assumptions that
13 you made in coming up with that recommendation?

14 A Just the same assumption I did in the first step,
15 I used BellSouth's cost studies and not the cost studies the
16 Commission approved. Which, by the way, there was one other
17 benefit and I probably should state this very clearly.
18 Obviously we all know BellSouth is going to appeal this and
19 BellSouth is going to try and use every argument they can
20 and one of the arguments they're going to try and say is
21 that somehow this is recreating TELRIC based access. And so
22 I wanted to make absolutely clear that the prices we are
23 paying are above TELRIC levels. Now I don't think their
24 argument has merit, but I also want to make sure that the
25 Commission is in the strongest legal position possible.

1 Q Could you refer to page 26 of your testimony?

2 A Yes.

3 Q And you recommend here that a methodology to
4 calculate an estimate for the contribution to shared common
5 overhead costs, correct?

6 A Yes.

7 Q Could you explain, please, how the contribution to
8 the shared/common/overhead increase produces the rates for
9 loops, switching and transport that you recommend?

10 A Yes, basically what it is is that if you go back
11 into the cost model and reverse out whatever contribution
12 that BellSouth had used, which as I indicated varies
13 somewhat by different asset and different rate elements, but
14 they're around 15 percent, some are a little bit higher,
15 some are a little bit lower -- backed all those out in
16 effect, and then plugged in 20 percent. So BellSouth has a
17 higher contribution to shared and common costs in the rates
18 I propose. It's uniform, 20 percent across all of these
19 rates, whereas in the TELRIC studies, BellSouth had used a
20 variety of factors that varied by different rate element.

21 MR. WALSH: Mr. Chairman, I'd like to make a
22 hearing request at this time. Mr. Gillan, could you provide
23 all the workpapers, inputs and any runs of models you used
24 to produce these results?

25 THE WITNESS: Yes, we can.

1 BY MR. WALSH:

2 Q Thank you. Mr. Gillan, are you familiar with the
3 staff recommendation in the cost docket, Docket Number
4 14361-U?

5 A In general terms, yes.

6 MR. WALSH: Mr. Chairman, I'd like to provide the
7 witness with a copy of the staff's recommendation in that
8 Docket at this time.

9 CHAIRMAN WISE: That's fine.

10 MR. WALSH: I'll wait for a moment as it gets
11 passed out.

12 (A document was proffered to the witness.)

13 MR. WALSH: Mr. Chairman, I'd ask that the staff
14 recommendation be marked for identification as Staff Exhibit
15 Number 1.

16 CHAIRMAN WISE: So marked.

17 (The document referred to was
18 marked for identification as Staff
19 Exhibit Number 1.)

20 BY MR. WALSH:

21 Q Mr. Gillan, I'm not going to ask you questions
22 specifically on particular adjustments in the staff's
23 recommendation, but if you need to refer to anything before
24 answering the question, I wanted you to have that document.

25 In your proposal, you're starting with BellSouth's

1 proposed UNE rates in 14361-U. But if I understand your
2 analysis, you don't endorse those as UNE rates, you think
3 that they are inflated, correct?

4 A Yes, that why -- the charts that I've used and the
5 information I've provided in the testimony, in comparing
6 them to TELRIC compare them to the rates adopted by the
7 staff through the remand process.

8 Q And if the Commission were to adopt the staff's
9 recommendation at tomorrow's administrative session, then
10 that would be the Commission stating that they believe that
11 what is in the document that I just provided you is the
12 appropriate TELRIC rates going forward for those elements,
13 correct?

14 A Correct.

15 Q If this Commission wanted to -- instead of
16 starting with BellSouth's numbers, if the Commission adopts
17 the staff's recommendation, the Commission will not have
18 endorsed, but rather start with the costs, the TELRIC costs
19 that it found to be appropriate in determining just and
20 reasonable rates, what would you tell this Commission on how
21 to go from that to just and reasonable rates? What steps
22 should the Commission take?

23 A I think I would do two things. I think if you
24 were to do that, I would increase only the common cost
25 allocation to make a discrepancy between the two. And I

1 would make the comparison of the rates that you were
2 producing to the cost -- the incremental cost rates that
3 BellSouth is looking at in some of these documents,
4 specifically in documents that Covad was addressing,
5 BellSouth provides its actual, what it believes to be its
6 incremental cost of DSL loops, and in the switching
7 documents, they have their incremental cost of switching.
8 And I think you'll see that using a 20 percent common cost
9 allocator like I used in your cost model is still going to
10 produce rates that are substantially above BellSouth's
11 incremental cost, which are, as I understood Dr. Taylor's
12 testimony, the lowest just and reasonable rate is that
13 incremental cost. Then you would see a higher rate being
14 proposed there.

15 Q And Mr. Taylor testified today that he believed
16 that it would work to the disadvantage of CLECs that have
17 entered into commercial agreements if the Commission were to
18 set a just and reasonable rate for 271 delisted UNEs. Were
19 you here for that testimony?

20 A Yes, I was.

21 Q Do you agree with that statement?

22 A No. The main competitor for these CLECs is not
23 each other, it's BellSouth. The disadvantage they all face
24 is that BellSouth's cost that is relevant to them in their
25 pricing decisions, and regardless of what Dr. Taylor said,

1 BellSouth does actually look at cost information when it
2 prices. And when they have competitors, they look at
3 competitive prices too.

4 But all you're trying to do in establishing a just
5 and reasonable rate is to give a CLEC a fighting chance to
6 compete against the principal competitor in the marketplace,
7 which is BellSouth. Now some of those CLECs signed
8 agreements to get out of the market. I don't care what just
9 and reasonable rate you set. AT&T and MCI, today known as -
10 - well, small AT&T, but you know, known as SBC and Verizon,
11 they're not coming back. Those guys are gone forever. The
12 only people you've got left are these other carriers. Some
13 of them have signed agreements and they're on their way out.
14 Some of them have signed agreements, as the spreadsheet
15 showed, 70 percent of the ones that signed agreement, aren't
16 even in this state doing business. They don't have any
17 lines at all. Others have signed agreements that permit
18 them, if there's a 271 rate, to shift. Some of them may not
19 have. But all of those agreements expire in a relatively
20 short period of time.

21 Q Have any of those carriers, to your knowledge,
22 that entered into those agreements opposed the idea of
23 setting just and reasonable rates for 271 elements?

24 A Not a one, not a one. And some of them are
25 members of CompSouth and they're all aware of this case and

1 they've all supported it, if not financially, certainly
2 emotionally.

3 MR. WALSH: Mr. Chairman, that completes the
4 questions that I have. I'd ask that Staff Exhibit 1 be
5 moved into evidence.

6 CHAIRMAN WISE: It will be.

7 (The document, heretofore marked as
8 Staff Exhibit Number 1, was
9 received in evidence.)


10 MR. WALSH: Thank you.

11 CHAIRMAN WISE: Ladies and gentlemen, it looks
12 like it's a good spot to go ahead and break for the evening
13 and we'll go ahead and recess until tomorrow at what time,
14 what time is the notice for? Great, 1:30, thank y'all very
15 much.

16 (Whereupon, the hearing was adjourned at 5:50
17 p.m., to reconvene at 1:30 p.m. on February 21,
18 2006.)
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C E R T I F I C A T E

I, Peggy J. Warren, do hereby certify that the foregoing pages represent a true and accurate transcription of the events which transpired at the time and place set out in the caption, to the best of my ability.


Peggy J. Warren, CVR-CM, CCR A-171

BEFORE THE GEORGIA PUBLIC SERVICE COMMISSION

RECEIVED

FEB 28 2006

**EXECUTIVE SECRETARY
G.P.S.C.**

In the Matter of: :

Generic Proceeding to Examine ISSUES :
RELATED TO BELL SOUTH'S OBLIGATIONS :
TO PROVIDE UNBUNDLED NETWORK :
ELEMENTS :

Docket No. 19341-U

Hearing Room 110
244 Washington Street
Atlanta, Georgia

Tuesday, February 21, 2006

The above-entitled matter came on for hearing
pursuant to Notice at 1:30 p.m.

BEFORE:

STAN WISE, Chairman
ANGELA ELIZABETH SPEIR, Commissioner
H. DOUG EVERETT, Commissioner
ROBERT B. BAKER, JR., Commissioner

* * *

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I N D E XWITNESSES:DIRECT CROSS REDIRECT RECROSS

Joseph Gillan

By Ms. Foshee

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By Mr. Magness

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EXHIBITFOR IDENTIFICATION IN EVIDENCE

CompSouth:

4 - ITC^DeltaCom Response to
BellSouth Discovery

270

270

5 - Gillan Summary Charts

271

271

BellSouth:

3 - Gillan Tennessee Testimony

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4 - Momentum web page

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5 - UNE-P DS0 Chart

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P R O C E E D I N G S

CHAIRMAN WISE: Good afternoon, everyone. We're back with 19341. Mr. Gillan didn't leave town.

And does CUC have any cross for Mr. Gillan?

(No response.)

CHAIRMAN WISE: BellSouth?

FURTHER CROSS-EXAMINATION

BY MS. FOSHEE:

Q Good afternoon, Mr. Gillan. I'm Lisa Foshee on behalf of BellSouth. I remind you you're still under oath.

A Thank you.

Q You're here representing CompSouth today; correct?

A Yes.

Q How many CLECs are currently members of CompSouth?

A I don't know.

Q And so I take it because -- would you accept, subject to check or confirmation by your counsel, that there are 16 members of CompSouth currently?

A I'll accept that, subject to check.

Q And I take it, since you didn't know how many members of CompSouth there are, that you did not talk to each member of CompSouth individually about your testimony that you filed here; correct?

A No, that wouldn't be true. I just don't count them when I talk to them.

1 Q Did you talk to each member of CompSouth
2 individually about this testimony before you filed it?

3 A I didn't talk to them individually. The testimony
4 -- I talked to all of them at an annual meeting, as the case
5 -- as we knew the case was preparing. I talked to them
6 collectively on several conference calls, and the testimony
7 was distributed to each of them individually.

8 Q Let me just try it one more time, Mr. Gillan.
9 Before you filed this testimony, did you talk to each member
10 of CompSouth about the content of your testimony; yes or no?

11 MR. MAGNESS: Objection; just asked and answered.
12 He just answered the very same question.

13 MS. FOSHEE: Please answer the question.

14 CHAIRMAN WISE: I'd -- I'd like to hear it, Mr.
15 Gillan.

16 BY MS. FOSHEE:

17 Q Yes or no, please, and then explain.

18 A There is no "yes or no" to that. I talked to them
19 in a collective group. Whether or not all of them were
20 there in that collective group, or -- or all of them
21 actually spoke, I don't recall.

22 Q So you don't know for a fact that every member of
23 CompSouth has approved the testimony that you filed in this
24 case, or, in fact, supports it?

25 A No, I wouldn't say that. The testimony was

1 distributed to every member. There were several calls
2 available to every member. The approval process of
3 CompSouth is somewhat informal, but there was an opportunity
4 for every member to register any contrary opinion.

5 So, given the fact that that's basically how the
6 approval process in CompSouth works, I'd say that the
7 testimony was approved by CompSouth.

8 COMMISSIONER BAKER: Did anybody express any
9 disapproval with any portion of your testimony?

10 THE WITNESS: No, nobody.

11 BY MS. FOSHEE:

12 Q Who's paying your bill in this proceeding?

13 A CompSouth.

14 Q How many of the 16 members of CompSouth have
15 commercial agreements?

16 A I don't know.

17 Q Would you accept, subject to check, that half of
18 the members have a commercial agreement?

19 A Yes, I'll accept that, subject to check.

20 Q Okay. And of those eight remaining members that
21 don't have a commercial agreement, how many of those have no
22 UNE-Ps?

23 A I don't know which eight would be the ones that
24 are in and the ones that are out. I've looked at the data
25 in an aggregate market form, not for individual carriers.

1 Q Okay. Would you accept, subject to check, that of
2 the eight that do not have commercial agreements, three of
3 them have no UNE-Ps?

4 A Yes, I'll accept that, subject to check.

5 Q Okay. So that leaves us with five CLECs left that
6 -- that have a relevant interest in this proceeding.

7 A No.

8 Q Do you know that one of those is not certificated
9 in Georgia?

10 A Backing up. The statement you made is false. All
11 members of CompSouth have an interest in this proceeding.
12 All members of CompSouth are affected or aware of it.
13 Whether a carrier is in the market today or not, they may
14 still have an interest in expanding in the future. There
15 are members of CompSouth that have signed commercial
16 agreements with BellSouth because they're engaged in a
17 market exit strategy due to the fact that the rates proposed
18 by -- by BellSouth do not permit sustained competitive
19 activity. Those carriers may have a commercial agreement,
20 but they're certainly interested in the outcome of this
21 proceeding.

22 Q So you agree, Mr. Gillan, that you can have a
23 commercial -- that the fact that you may have a commercial
24 agreement is relevant, even if you have no current UNE-Ps?

25 A No, I didn't say that.

1 Q I think you did.

2 A No, I did not.

3 Q Can you please confirm for me what you said.

4 A I said that carriers who are not in the market
5 today could be interested in having a economically viable
6 rate. There is no economically viable rate in the
7 commercial agreements. So I do not believe that the fact
8 that a carrier has signed a commercial agreement with you
9 that has no activity today, had no activity when they signed
10 the agreement, gives any credibility, whatsoever, to the
11 fact that carrier signed the agreement as the price being
12 just and reasonable. I think those are very different.

13 Q So if you don't have a commercial agreement and
14 you have no activity, you are interested because you might
15 have a future market plan of entering UNE-P. But if you did
16 sign a commercial agreement, you aren't interested, even if
17 you have a future plan of entering with UNE-P; is that
18 right?

19 A It goes to the question as to whether or not the
20 Commission establishes rates that allow for competition. If
21 the Commission establishes rates that allow for competition,
22 a carrier that is not in the market today may choose to
23 enter the market, or hopefully for some of these carriers,
24 reenter the market in the future. But the -- the carriers
25 that have no activity today and have signed your commercial

1 agreement, the problem here is that that rate doesn't have
2 any economic viability to it. So carriers that haven't
3 signed, who have no activity today I don't believe can be
4 used by you to claim that the rate is just and reasonable
5 because some carrier that's not competing today has signed
6 an agreement that all the evidence indicates will not give
7 them an opportunity to compete in the future, either.

8 Q Do you know that SUPRA is a member of CompSouth?

9 A Yes.

10 Q Do you know that SUPRA is not certificated in
11 Georgia?

12 A No.

13 Q Will you accept that, subject to check?

14 A Certainly. CompSouth is a regional association.

15 Q Okay. So, that being --

16 A Not all the members compete in all the states.

17 Q Okay. And that leaves four members that we're
18 talking about, that either don't have a commercial agreement
19 -- that don't have a commercial agreement and have UNE-P
20 today. Of those four carriers, do you know how many UNE-Ps
21 they have combined?

22 A I've not done that calculation.

23 Q Would you accept, subject to check, that it's
24 29,000?

25 A No.

1 Q Okay. Would it surprise you to learn that 91
2 percent of all UNE-Ps in Georgia are provided via commercial
3 agreements today?

4 A No, you have a monopoly. That's part of my
5 testimony. You have a monopoly, and you've exercised that
6 monopoly to charge outrageous prices. That's why we're here
7 before the Commission asking the Commission to establish a
8 just and reasonable rate.

9 Q I didn't ask you your opinion as to why. What I
10 asked you is: Are you aware that 91 percent of all the UNE-
11 Ps provided in Georgia today are now provided via commercial
12 agreement; yes or no?

13 A I was not aware of it. I'm not surprised by it.

14 Q Okay. So even if your four clients in CompSouth
15 were the only ones without commercial agreements, they would
16 represent only nine percent of the UNE-Ps in Georgia; right?

17 A If -- if all your data is correct.

18 Q Okay. Now --

19 A However, they'll continue to have a growing
20 percentage since the others are predominantly engaged in a
21 market exit strategy.

22 Q So you're --

23 CHAIRMAN WISE: Explain that, Mr. Gillan.

24 THE WITNESS: Well, you look at AT&T's number. A
25 lot of the UNE-P lines in the southeast are AT&T and MCI.

1 So what? I mean, it means that when Ms. Foshee gets up she
 2 can throw out these statistics that show, hey, we have all
 3 these lines under commercial agreement. But we know that
 4 certainly for those two carriers they're scampering out of
 5 this market with really no intention of returning. So what
 6 -- what difference does it make that they have convinced
 7 AT&T and MCI and all those lines to come into a commercial
 8 agreement? It's not part -- it's not part of a strategy by
 9 those carriers to continue to serve and compete for those
 10 customers; it's part of those carriers' strategies to just
 11 harvest some cash as they get out of the marketplace.

12 BY MS. FOSHEE:

13 Q Mr. Gillan, are either AT&T or MCI/Verizon members
 14 of CompSouth today?

15 A Oh, of course not.

16 Q Okay. And of the eight carriers in CompSouth that
 17 have signed commercial agreements, is it your testimony here
 18 today that each of those carriers is exiting the local
 19 market in Georgia?

20 A Well --

21 Q Yes or no, please.

22 A No, I have not gone through the list for all
 23 eight.

24 Q Okay.

25 A I know for ITC^DeltaCom they've abandoned the

1 residential market and exiting. Birch, I'm aware, has fired
2 all their sales force.

3 Q Birch is not a member of CompSouth, is it?

4 A Yes, it is.

5 Q You sure?

6 A Yes.

7 Q Okay. Of the -- but for the eight that we -- the
8 eight that have commercial agreements that are in your
9 organization, you don't have any idea whether they're
10 exiting the commercial market, other than the two you just
11 referenced; right?

12 A Those are the two that come to mind.

13 Q Okay. Now --

14 A I'm not aware of anybody who's using the
15 commercial agreement in an attempt to actually survive in
16 the market serving the same customer segment they were
17 competing for originally.

18 Q Well, that's the --

19 A Regular POTS customers, residential, or small
20 business. I mean, some of these carriers may not be exiting
21 the market -- the market in total. But in terms of that
22 customer segment, that's what's getting abandoned.

23 Q But you haven't talked to them, have you. We've
24 already established that. You don't -- you don't know what
25 they're doing, do you?

1 A Ms. Foshee, I've talked to every one of these
2 carriers over a period of several years. Now, I haven't
3 talked to them each about every topic, every day. But I'm
4 generally aware of each of their business strategies, and
5 the reality is when people talk about serving the POTS
6 marketplace that used to be able to be addressed by UNE-P,
7 carriers are not using those commercial agreements to try
8 and succeed in that conventional marketplace. They're
9 either using them as a bridging agreement to get into a
10 different marketplace, or they're fighting you here before
11 they have to sign a bridging agreement. But in terms of
12 actually finding a member who believes that your commercial
13 agreement provides anybody a sustainable business plan in
14 the POTS marketplace, I've never heard a carrier say that
15 was the case.

16 Q Are you authorized, Mr. Gillan, to state on the
17 stand under oath today, by the eight CompSouth members who
18 have commercial agreements, that they are all exiting the
19 local market; yes or no?

20 A No.

21 Q Now, I assume from your testimony here today and
22 the testimony that you put in your prefiled that your
23 position is because BellSouth has 91 percent of the UNE-Ps
24 in Georgia under commercial agreements, that it means that
25 we have market power and we've essentially coerced the CLECs